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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,391	03/18/2004	Gary W. Guent	038469-0213	7338

7590 04/11/2008  
JEFFREY J. HOHENSHELL  
710 MEDTRONIC PARKWAY  
MINNEAPOLIS, MN 55432

EXAMINER
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LACYK, JOHN P

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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04/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/804,391	<b>Applicant(s)</b> GUENST ET AL.	
	<b>Examiner</b> John P. Lacyk	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,13 and 15-37 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 and 32-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-10,13,15-17 and 24-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/26/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

1. This application contains claims 18-23 and 32-37 drawn to an invention nonelected with traverse in the reply filed on 04/30/07. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-10, 13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimberley et al (3,361,133) in view of Collito (3,254,650) or Toch (3,916,875).

Kimberley et al discloses a device (see Figures 1 and 3) used to hold or clamp a blood vessel having a handle (5), a collar (1 and 2) that encircles the blood vessel, and the collar being connected to a vacuum port that is coupled to a vacuum source (6 and 7). The collar has an inner sleeve (13 and 14) that is made of a porous material such that when a vacuum is applied the porous material acts as a plurality of suction apertures to hold the blood vessel to the clamp. As shown in Figure 3, the collar is comprised of two collar halves that together form a cylinder. The handle (5) includes swingable arms (6 and 7) which are considered to be part of the handle as well as malleable at least to some degree since they are swingable. Kimberley et al discloses the claimed device except for specifically using a ring for encircling the collar halves to hold them together

Art Unit: 3735

during use. Collito and Toch both teach that it is well known to use a ring type clamp, (48) and (20), respectively, to hold two halves of a cylindrical device together within the body. Therefore a modification of Kimberley et al such that the collar is held together using a ring would have been obvious in view of either Collito or Toch which teaches that it is known to use such a ring type clamp to hold two halves of a cylindrical device together further since this would be the mere substitution of one known type of securing means to make sure the device is held together during use for another.

4. Claims 1, 4-10, 13, 15-17, 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peternel (3,561,448) in view of x.

Peternel discloses a device used to hold or clamp a blood vessel having a handle ((80 and 108), a first and second collar (16 and 18), that encircles the blood vessel, and the collars being connected to a vacuum port that is coupled to a vacuum source. The collars have a plurality of passages or apertures (56) to allow fluid communication of the vacuum source to the blood vessel to hold the blood vessel to the clamp. As shown in Figure 3, the collars are comprised of two collar halves that together form a cylinder. The handles include vacuum lines (96) which are considered to be part of the handle. Each arm (80 and 108) of the handle are considered to be first and second prongs that are attached to the first and second collars and are “malleable whereby the distance may be changed” in that when the arms are moved the distance is changed with respect to each other. Peternel discloses the claimed device except for specifically using a ring for encircling the collar halves to hold them together during use. Peternel discloses the

claimed device except for specifically using a ring for encircling the collar halves to hold them together during use. Collito and Toch both teach that it is well known to use a ring type clamp, (48) and (20), respectively, to hold two halves of a cylindrical device together within the body. Therefore a modification of Peternel such that the collar is held together using a ring would have been obvious in view of either Collito or Toch which teaches that it is known to use such a ring type clamp to hold two halves of a cylindrical device together further since this would be the mere substitution of one known type of securing means to make sure the device is held together during use for another.

5. Applicant's arguments with respect to claims 1, 4-10, 13 and 15-17 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's arguments filed 12/26/07 have been fully considered but they are not persuasive. Applicant argues that Peternel does not show all of the limitations of claim 24; however as can be seen all of the claimed limitations are shown in Peternel.

Peternel discloses a handle (80 and 108); a first and second collar (16 and 18) that is coupled to the handle; the second collar being separated from the first collar by a first distance (as can be seen in Figure 2) the collars are separated by a first distance being ends of the blood vessel (20 and 22) that are between the ends of the first and second collar; each collar encircles a blood vessel and having a number of suction apertures (56).

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is 571-272-4728. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chuck Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John P Lacyk/  
Primary Examiner, Art Unit 3735

John P Lacyk  
Primary Examiner  
Art Unit 3735

J.P. Lacyk